

DAVID MARSHALL GATES,)	No. C 09-05408 JW (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL WITH
)	LEAVE TO AMEND; GRANTING
vs.)	EXTENSION OF TIME TO FILE
)	COMPLETE <i>IN FORMA PAUPERIS</i>
WARDEN, et al.,)	APPLICATION
)	
Defendants.)	
)	

On November 17, 2009, plaintiff filed a letter with this Court which opened this action. On the same day, the clerk of the Court sent a notification to plaintiff that he must submit a complaint within thirty days or face dismissal of the action. (Docket No. 2.) On December 7, 2009, plaintiff filed a signed copy of this court's form complaint, (Docket No. 5), but the complaint is deficient because plaintiff failed to identify defendants, make a statement of his claims, and state the specific relief desired. (See Compl. at 2-3.) Accordingly, this Court has no choice but to dismiss the complaint with leave to amend.

The clerk also sent a notice to plaintiff directing him to either pay the filing fee or file an In Forma Pauperis Application within thirty days or face dismissal. (Docket No. 3.) The notice included a copy of this court's In Forma Pauperis

1 Application and a return envelope. (Id.) On December 7, 2009, plaintiff filed a
2 motion for leave to proceed in forma pauperis using the proper form. (Docket No.
3 11.) However, the application is insufficient because plaintiff did not complete the
4 form nor submit a Certificate of Funds in Prisoner's Account completed and signed
5 by an authorized officer at the prison and a copy of his prisoner trust account
6 statement showing transactions for the last six months. (Docket No. 5.) In the
7 interest of justice, the Court will extend the time for plaintiff to file a complete in
8 forma pauperis application.

10 CONCLUSION

11 For the foregoing reasons, the Court orders as follows:

12 1. The complaint is DISMISSED with leave to amend. Within **thirty**
13 **(30) days** of the date this order is filed, plaintiff shall file an amended complaint.
14 The amended complaint must include the caption and civil case number used in this
15 order and the words "AMENDED COMPLAINT" on the first page and write in the
16 case number for this action, Case No. C 09-05408 JW (PR).

17 Plaintiff is advised that to state a claim under 42 U.S.C. § 1983, a plaintiff
18 must allege that a person acting under the color of state law committed a violation of
19 a right secured by the Constitution or laws of the United States. West v. Atkins, 487
20 U.S. 42, 48 (1988). Plaintiff must identify defendants by name and state how each
21 individual defendant violated a specific federal right.

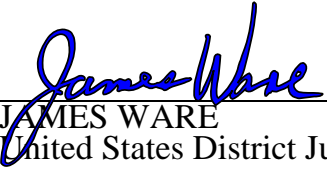
22 2. Plaintiff is granted an extension of time to file a complete in forma
23 pauperis application. Plaintiff must submit the completed application along with the
24 necessary documents **within thirty (30) days** from the date this order is filed.

25 **Failure to respond in accordance with this order by filing an amended**
26 **complaint and a complete in forma pauperis application will result in dismissal**
27 **of this case without prejudice and without further notice to plaintiff.**

28 ///

1 The Clerk shall include two copies of the court's complaint and two copies of
2 the court's In Forma Pauperis Application with a copy of this order to plaintiff.

3
4 DATED: March 30, 2010


JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DAVID M. GATES,
Plaintiff,

Case Number: CV09-05408 JW

CERTIFICATE OF SERVICE

v.

WARDEN, et al.,
Defendants.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 3/31/2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

David Marshall Gates J-60908
Atascadero State Hospital
P. O. Box 7001
Atascadero, CA 93423

Dated: 3/31/2010

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk